Prakash Trading Copany & Ors. vs. M/s Hasti Ratan & Co. & Ors.

SB Civil 1st Appeal No.96/1988

Date of Order: 13th March, 2007.

PRESENT

HON'BLE MR.JUSTICE BHAGWATI PRASAD

Mr.Rameshwar Chouhan for the appellant/s.
Mr. Dalpat Raj Bhandari for the respondent/s.

Heard learned counsel for the parties.

The present appeal has been filed against a decision of the trial court in civil original case No.04/1980 dated 18th April, 1988. Though in earlier proceedings another file being numbered as 03/1980 was consolidated with this case, but at the time of final decision the court decided to pass separate judgments.

The suit was filed by the plaintiff alleging inter alia that at the behest of defendant No.5, its partner defendant No.7 approached him and settled the contract for defendant No.1. The goods were dispatched and admittedly received by M/s. Shriram Industries. But the entire amount of the contract was not paid. The

plea of the defendant was that since money in relation to another contract was due, therefore, full payment was not made in this transaction. The suit was filed for Rs.14, 378.02 paise . That was the remainder of the amount which was not paid by defendant No.1.

The defendant No.1 has, though filed the written statement, but had not led any evidence. Thus so far as defendant No.1 is considered, his case was almost uncontested because without there being evidence, his written submissions could not have been taken into consideration for his defence. Defendant No.5 , the present appellant, has admitted that contracts were entered into but since the goods were not supplied in relation to other contracts, therefore, it was a breach of contract and thus the amount was not paid. The trial court , after considering this aspect of the matter in issue No.1, has decided that all the contract entered into between the parties were for different cause of action . For one contract, money pending for another contract, could not have been withheld and it was incumbent on the person receiving the goods to pay for the goods received by him. On that count , withholding of money is not justified.

While arguing the appeal, the learned counsel for the appellant challenged the findings of issue No. 1 and stated that except the contract in question, the plaintiff has not supplied the

goods for contract as entered are shown in Ex.A/2, A/3, A/4 and A/5, since the goods were supplied only in relation to the agreement Ex.A/1.The defendant appellant invited my attention to Ex.A/1, which is on the letter head of Prakash Trading Company and there in, it has been mentioned that purchasers were M/s Shriram Industries. He admitted the part payment. Remainder of the payment was not established.

In the aforesaid circumstances, the trial court has held that all contracts were separate contracts. They were to be fulfilled in their shape and style and if part payment has been made , withholding of the remainder money was wrong, then this court feels that no illegality has been committed by the trial court. As the admitted facts go that Shriram Industries have received the goods , they were required to make the final payment. Having made part payment, they have almost supported the case of the plaintiff. The trial court does not appear to have committed any illegality. In that view of the matter, there is no force. The appeal is accordingly dismissed.

(BHAGWATI PRASAD), J.

L.George